

REMARKS

Entry of this Amendment and reconsideration are respectfully requested in view of the amendments made to the claims and for the remarks made herein.

Claims 1-20 are pending and stand rejected. Claims 8, 15, 17 and 20 have been amended.

Claims 1, 6-8, 14-16 and 20 stand rejected under 35 U.S.C. §103(a) over Sipola (WO 0045543) in view of Lindhorst-Ko (USPPA 2002/0075873).

Applicant respectfully disagrees with and explicitly traverses the reason for rejecting the claims. However, in the interest of advancing the prosecution of this matter, independent claims 8, 15, 17 and 20 have been amended to more clearly state the invention. No new matter has been added.

Support for the amendment can be found in at least claim 1 which states "...subsequently transmitting a request for retransmission of said particular packet containing said lost payload block to said source node, as identified by the sequence identifier..."

Sipola, as read by applicant, discloses an incremental redundancy communication method and system wherein each data block includes an indicator indicating whether a data block is an original transmission or a retransmission. When the receiver detects a block received with an error, the receiver sends a request back to the transmitter, which re-transmits the data block with the indicator set to indicate retransmitted block and an extra header. The "extra header representing a reference to a physical location of an earlier transmission of the block in a sequence of transmitted blocks." (see Abstract).

Accordingly, Sipola describes a system where no identification is included in an original data block but in the case of a retransmission the transmitter provides an extra header to include a reference to the physical location to identify the block. This extra header information provides the receiver with the information needed to appropriately apply the received data in the sequence of data blocks. The presences of the extra header is determined by the receiver using the transmission/retransmission bit. In this manner

Amendment
Serial No. 09/918,163

Docket No. US010342

Sipola is able to save bandwidth during transmission as unnecessary overhead, i.e., header information is not transmitted.

Hence, Sipola fails to describe a system wherein the data blocks include a sequence identifier as the data blocks in Sipola are initially transmitted without any identifier.

Lindhorst-Ko discloses a method and apparatus for protection of traffic wherein duplicate copies of data packets of the protected traffic are sent via physically diverse paths. The data packets include a sequence number for determining their position in the protected traffic. The destination node receives the data packets from the path, selects the next data packet in the sequence and transfers that packet to a receiving queue, while duplicate packets are discarded. (see Abstract). However, Lindhorst-Ko fails to teach or suggest requesting retransmission in case of an error in a received data package as the duplicate block is already available for subsequent transmission.

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

In this case, Sipola teaches a method for requesting re-transmission of data determined to be in error and the retransmitted data includes a header to indicate the position of the data in the data stream. Sipola provides no suggestion or motivation to use header information in the initial transmission and only uses the header in the retransmission to identify the position of the retransmitted data. In this manner, transmission bandwidth is saved as the header information is not included in initial transmission.

Lindhorst-Ko teaches a sequence identifier in each data packet but fails to provide any suggestion or motivation to request retransmission of data determined to be in error.

In the matter of obviousness there is a great emphasis placed on "the importance of the motivation to combine." Yamanouchi Pharmaceutical Co. v. Danbury Pharmacal, Inc. 231 F. 3d. 1339, 56 USPQ2d. 1641, 1644 (Fed. Cir. 2000). More specifically, in the matter of obviousness, this court found that:

Amendment
Serial No. 09/918,163

Docket No. US010342

"an examiner ... may often find every element of a claimed invention in the prior art. If identification of each claimed element of the prior art was sufficient to negate patentability, very few patents would ever issue. Furthermore rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner ... to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention ... To counter this potential weakness in the obviousness construct, the suggestion to combine requirements stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness. *id.* quoting *In re Rouffet*, 149 F.3d 1350, 1357-58, 47 USPQ 2d 1453, 1457 (Fed. Cir. 1998)"

Rather than finding motivation to incorporate a sequence number in the teaching of Sipola, applicant submits that an impermissible use of the teachings of the instant application have been used as a blueprint to combine the teachings of Sipola and Lindhorst-Ko without any suggestion or reason for such a combination. Rather the incorporation of the sequence number in the data packets of Sipola would be contrary to the teachings of Sipola as the incorporation of this information increases the number of bits that are transmitted in the initial transmission. Hence, the incorporation of the sequence number would be contrary to the teachings of Sipola. Similarly, Sipola lacks any suggest to use a sequence number when requesting re-transmission as Sipola fails to consider the use of a sequence number. Simiarily, Lindhorst-Ko provides no motivation to request re-transmission as Lindhorst-Ko has no need for such re-transmission.

Having shown that there is no teaching or suggestion in the Sipola reference to incorporate a sequence number, applicant submits that the reason for the rejection of claim 1 has been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to the remaining independent claims, these claims recite subject matter similar to that recited in claim 1 and were rejected citing the same references used in rejecting claim 1. Thus, the remarks made in response to the rejection of claim 1 are also applicable in response to the rejection of these claims. Applicant submits that for the amendments made to these claims and for the remarks made with regard to the rejection of claim 1, which are reasserted, as if in full, in response to the rejection of the remaining independent claims, the reason for the rejection of these claims has been overcome and

Amendment
Serial No. 09/918,163

Docket No. US010342

the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

Claims 2-5 and 11-13 stand rejected under 35 U.S.C. §103(a) over Sipola in view of Lindhorst-Ko as applied to claims 1 and 6-8 and further in view of Choi et al. ("A Class of Adaptive Hybrid ARQ Schemes for Wireless Links" IEEE, Vol. 50, No. 3, May 2001).

Applicant respectfully disagrees with, and explicitly traverses, the reason for the rejection.

Applicant respectfully submits that all of the above claims are believed to be allowable at least for their respective dependence from one of claims 1 or 8, which have been shown to include subject matter not disclosed by the combination of Sipola and Lindhorst-Ko. The addition of the teachings of the Choi article to the teachings of Sipola and Lindhorst-Ko fails to render the base claims unpatentable as Choi provides no teaching that overcomes the deficiency in the combination of Sipola and Lindhorst-Ko, let alone the dependent claims as alleged. Accordingly, the dependent claims are also believed allowable based on their dependence from an allowable base claim. Reconsideration and withdrawal of this ground of rejection are respectfully requested.

Claims 17-19 and 9-10 stand rejected under 35 U.S.C. §103(a) over Sipola and Lindhorst-Ko as applied to claims 1, 8 and 15 above, and further in view of Kwon et al. (U.S. 6,59,4,262 herein after "Kwon").

Applicant respectfully disagrees with, and explicitly traverses, the reason for the rejection.

Applicant respectfully submits that all of the above claims are believed to be allowable at least for their dependence from one of claims 1, 8 or 15 which have been shown to include subject matter not disclosed by the combination Sipola and Lindhorst-Ko. The addition of the teachings of Kwon to those of Sipola and Lindhorst-Ko fails correct the deficiency in the combination of Sipola and Lindhorst-Ko to render the base claims unpatentable. Accordingly, the dependent claims are also believed allowable based on their dependence from an allowable base claim. Reconsideration and withdrawal of this ground of rejection are respectfully requested.

Amendment
Serial No. 09/918,163

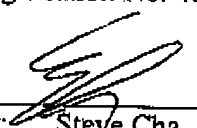
Docket No. US010342

For all the foregoing reasons, it is respectfully submitted that all of the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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